

October 24, 2006

The Honorable Charles Grassley  
Chairman  
Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Max Baucus  
Ranking Member  
Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Bill Thomas  
Chairman  
House Ways and Means Committee  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Charlie Rangel  
Ranking Member  
House Ways and Means Committee  
1106 Longworth House Office Building  
Washington, DC 20515

RE: Comments to Tax Technical Corrections Act of 2006 (H.R. 6264) – IRC Section 4965 – Excise Tax on Certain Tax-Exempt Entities Entering into Prohibited Tax Shelter Transactions

Dear Chairmen and Ranking Members:

On behalf of transit agencies around the country, California transit agencies appreciate your introduction of H.R. 6264, the Tax Technical Corrections Act of 2006. Enactment of this measure will resolve numerous ambiguities in the Tax Increase Prevention and Reconciliation Act (TIPRA), the American Jobs Creation Act of 2004 (Jobs Act) and other significant tax legislation, improving compliance while providing certainty.

Per the Committees' request for comments on the proposed legislation, we respectfully request that an additional technical correction relating to the treatment of Sale In/Lease Out transactions under Section 4965 be included in the enacted legislation. The correction would clarify that TIPRA does not impose an excise tax on transit system transactions lawfully entered into before such transactions were prohibited under the Jobs Act.

Enactment of the Jobs Act effectively ended tax-advantaged leasing transactions, and none have been entered into since its effective date. However, for years prior to the enactment of the Jobs Act, the U.S. Department of Transportation (DOT) and its Federal Transit Administration (FTA) encouraged transit systems to employ innovative financing mechanisms as a means to raise revenue for public transit, and in fact heavily promoted the use of tax-advantaged leasing transactions to that end. This is evidenced in the 1998 FTA publication entitled "Innovative Financing Techniques for America's Transit Systems," which specifically encouraged the use of these transactions.

As such, public transit systems relying not only on DOT's encouragement but with the FTA's review and approval acted entirely in good faith when entering into these transactions. As intended, the proceeds earned under such transactions were long ago used to meet critical public transit needs.

Our concern is that, as currently written, IRC Section 4965 could be interpreted to impose an excise tax on transactions involving transit systems that were entered into in good faith long before the effective date of the Jobs Act. While we believe this interpretation to be wrong, it could mean a retroactive application of an excise tax to transactions that were not only lawfully entered into, but were recommended and approved by the federal government.

Such an application of Section 4965 would appear to be inconsistent with the approach to these leasing transactions taken under the Jobs Act. The language of the Jobs Act makes clear that Congress did not intend to target benefits received by state and local government entities. We believe this Congressional intent is further underscored by the Joint Committee on Taxation revenue estimate for TIPRA, which does not appear to anticipate taxation of these transactions. Rather, the JCT score shows an estimate which does not reflect collections from potentially affected transit entities.

Moreover, the transactions that were pending during consideration of the Jobs Act were specifically "grandfathered" and are not subject to the excise tax as per Section 4965. As a result applying Section 4965 to past leasing transactions would result in a 100 percent excise tax retroactively applied to older transactions, while more recent transactions are held harmless. This result would appear to be arbitrary and inequitable.

In light of the foregoing, we respectfully request that the technical correction clarify that the excise tax as enacted under TIPRA does not apply to transit agency transactions lawfully executed before the effective date of the Jobs Act.

Again, thank you for the opportunity to comment on H.R. 6264, the Tax Technical Corrections Act of 2006. We hope that this comment will help in clarifying the intent of Congress with respect to the applicability of Section 4965. We welcome the opportunity to answer any questions or discuss this issue further. Thank you for your consideration.

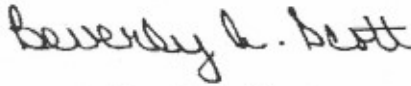
Sincerely,



Thomas E. Margro  
General Manager  
San Francisco Bay Area Rapid Transit  
District



Roger Snoble  
Chief Executive Officer  
Los Angeles County Metropolitan  
Transportation Authority



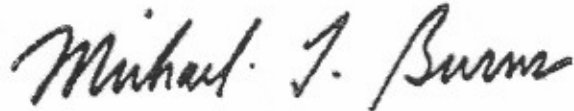
Beverly A. Scott  
General Manager  
Sacramento Regional Transit District



Nathaniel P. Ford Sr.  
Executive Director/CEO  
San Francisco MTA



Executive Director  
Peninsula Corridor Joint Powers Board  
(PCJPB) / Caltrain



General Manager  
Santa Clara Valley Transportation  
Authority

cc: Senator Dianne Feinstein  
Senator Barbara Boxer  
Governor Arnold Schwarzenegger  
Representative Pete Stark  
Representative Wally Herger  
Representative Xavier Becerra  
Representative Mike Thompson  
Representative Devin Nunes